

SECURITIES AND EXCHANGE BOARD OF INDIA

CORAM: DR.T.C.NAIR, WHOLE TIME MEMBER

IN THE MATTER OF

M/S KATTIKARAN & CO., SUB-BROKER,

SEBI REGISTRATION NO. INS 231013512

AFFILIATED TO M/S. COCHIN STOCK BROKERS LTD.,

MEMBER, NATIONAL STOCK EXCHANGE

WTM/TCN/MIRSD/ 61/11/06

DATE OF HEARING : May 16, 2006

APPEARANCES :

FOR NOTICEE : Kurien T. Kattikaran, Proprietor

FOR SEBI : Shri P.K.Kuriachen, General Manager

ORDER

(UNDER REGULATION 13(4) OF SEBI (PROCEDURE FOR HOLDING ENQUIRY BY ENQUIRY OFFICER AND IMPOSING PENALTY) REGULATIONS, 2002).

- 1.1 M/s. Kattikaran & Co. (hereinafter referred to as the 'sub-broker') is a proprietary concern represented by Shri. Kurien T. Kattikaran, registered with SEBI as a sub-broker affiliated to Cochin Stock Brokers Ltd., a member of NSE and BSE, having SEBI Registration Numbers: INS231013512 & INS010691512 respectively in accordance with Section 12 of SEBI Act, 1992.
- 1.2 An Inspection of the Books of Accounts, Documents and other records maintained by the sub-broker was conducted by SEBI for the financial years 2000-2001, 2001-2002 and April 2002 till May 21, 2002 i.e. the date of inspection. During the inspection, certain irregularities were found to have been committed by the sub-broker.
- 2.1 An Enquiry Officer (hereinafter referred to as "EO") was appointed vide order dated September 30, 2004 under Regulation 5(1) of SEBI (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002 (hereinafter referred as the 'Enquiry Regulations') to enquire into the alleged irregularities committed by the sub-broker.
- 2.2 A Show Cause Notice dated October 8, 2004 was issued by the EO to the sub-broker under Regulation 6 (1) of the said regulations which was served to the sub-broker through the NSE. The sub-broker submitted its reply vide letter dated nil, pleading ignorance and requested the EO to take a lenient view of the violations committed by him. He further requested for a personal hearing before the EO.
- 2.3 An opportunity of personal hearing was granted to the sub-broker on January 7, 2005. During the personal hearing, the sub-broker provided certain documents and reiterated his earlier submissions. The EO conducted the enquiry in accordance with the provisions of the said Regulations and the sub-broker was given a fair and reasonable opportunity to put forth his submissions.
- 2.4 After considering the reply and the submissions made at the time of personal hearing, the EO submitted his report dated January 28, 2005 recommending suspension of the certificate of registration of the sub-broker for a period of twenty days.
- 3.1 A copy of the Enquiry Report was sent to the sub-broker along with a show cause notice dated February 11, 2005, in terms of Regulation 13(2) of the said Regulations calling upon it to show cause as to why appropriate penalty including the penalty as recommended by the EO should not be imposed on it. The sub-broker replied to the SCN vide letter dated February 26, 2005 and March 22, 2005 and also sought a personal hearing in the matter.
- 3.2 The sub-broker was granted an opportunity of Personal Hearing before me on May 16, 2006 on which date he appeared and made his submissions. The sub-broker has also submitted his written submissions dated May 13, 2006 which is also placed on record and taken into consideration.
- 4.1 I have carefully considered the findings of inspection, enquiry report and the submissions of the sub-broker. My findings are as under :
- 4.2 The EO found that the sub-broker had dealt with two NSE members i.e. M/s. Praman Capital Market Services Ltd., and M/s. Peninsula Capital Market Services Ltd., without obtaining a valid registration from SEBI. The contention of the sub-broker was that they had acted as sub-broker during the period wherein the application for registration as a sub-broker of M/s. Peninsular

Capital Markets, was pending with SEBI and that the trading volume was very small. The proviso to Rule 3 of SEBI (Stock Brokers and Sub-Brokers) Rules, 1992 is reproduced below :

"Provided that such person may continue to buy, sell or deal in securities if he has made an application for such registration till the disposal of such application"

The EO found that the sub-broker had made an application for registration as a sub-broker of M/s. Praman Capital Services Ltd. and pending their application with SEBI seeking registration as a sub-broker, it had carried out a very small amount of business in its capacity as a sub-broker. The sub-broker further stated that it has subsequently stopped the said business and obtained the necessary registration from SEBI as a sub-broker of Cochin Stock Brokers Ltd. (CSBL). The sub-broker further stated that it had applied to SEBI for sub-brokership from M/s. Peninsular Capital Markets and started operating through them. The sub-broker further stated that consequent to CSBL obtaining membership in the NSE and BSE, it had made a request to SEBI to stop processing the sub-broker application in Peninsular and started operating through CSBL. The sub-broker stated that the business done with Peninsular was very small. The EO found that as per SEBI Circular No. SMD/Policy/Cir-98 dated January 16, 1998, no person is permitted to act as a sub-broker without valid registration from SEBI and members of stock exchanges who are dealing through members of other exchanges are required to obtain the certificate of registration from SEBI to act as a sub-broker under the Broker Regulations. I note that though the sub-broker had traded without obtaining registration, the volume of business was very small. Further, on obtaining the sub-brokership of CSBL the sub-broker stopped trading with the other two members and as there are no investor complaints against the sub-broker, I am inclined to take a lenient view.

- 4.3 The EO found that contrary to the requirements of the SEBI Circular SMDRP/POLICY/CIR-32-99 dated September 14, 1999, the sub-broker had failed to report to CSBL, off the floor transactions entered into by them with M/s Praman Capital Market Services and M/s Peninsular Capital Market Services Ltd., on the NSE for the period between 01.04.2000 and 30.04.2001. The EO further found that the sub-broker had accepted that off the floor transactions had not been reported to the stock exchange and hence found it guilty of violating the provisions of SEBI Circular dated September 14, 1999. I note that the sub-broker had stated that it was true that it had failed to report to Cochin Stock Exchange, the transactions entered with Praman and Peninsular which was due to ignorance. However, all its transactions were done through NSE trading mechanism to enable the investor to get the best possible price as there was nil or negligible trading on Cochin Stock Exchange. In view of the explanation of the sub-broker that the trades were routed through NSE, I am inclined to give the benefit of doubt to the sub-broker..
- 4.4 The EO found that the sub-broker had not maintained confirmation memos and that the daily statements of transactions were not issued in the prescribed format of sale/purchase bills and even basic details such as name of the broker to whom the sub-broker was affiliated and the SEBI Registration Number were not provided in them. The sub-broker while admitting that certain requirements were not incorporated in the database, stated that all the clients were issued statement of the day's transactions on the very same day. The EO found that the sub-broker had violated SEBI Circular No. SMD/Policy/Cir-11/97 dated 21.05.1997 and also Clause B(6) of the Code of Conduct as specified in the Schedule II of SEBI (Stock Sub-brokers and Sub-Sub-brokers) Regulations, 1992. I note that maintenance of requisite details in proper format helps in audit trail in the event of default and the sub-broker is required to adhere strictly to the statutory requirements. I, therefore agree with the findings of the EO that the sub-broker is guilty of the violations cited supra.
- 4.5 As regards the charge of not furnishing the Auditors' Certificate on a quarterly basis to CSBL, the sub-broker failed to submit any documentary evidence and hence the EO found it guilty. In the absence of an explanation by the sub-broker, I agree with the findings of the EO.
- 4.6 The EO found that the sub-broker had failed to maintain client registration forms for the clients, some of whom were active and of high value, in terms of their turnover which is in violation of SEBI Circular No. SMD/POLICY/IECG/1-97 dated February 11, 1997 and SMD /POLICY/Circulars/5-97 dated April 11, 1997. The EO, further found that in some of the forms maintained by the sub-broker, the details of the clients were not complete. The sub-broker, however, contended that post inspection corrective measures have been taken. SEBI vide the said Circular had advised all the Stock Exchanges to introduce the concept of ``Know Your Client." The EO found that in the instant case, there have been admitted lapses on the part of the sub-broker. The EO further found that the sub-broker had not exercised due care and diligence while executing trades for the clients and thus failed to comply with the circulars cited supra. I note that it is of utmost importance for a broker or sub-broker to maintain the details of its clients and provide the same as and when the need arises. This also helps in maintaining audit trail in the event of default. In view of this, I am inclined to agree with the findings of the EO.
- 4.7 With respect to the allegations of non maintenance of margin deposit book, failure to collect requisite margins from clients, non-transfer/delayed transfer of scrips/funds to clients, non-segregation of client's money and own funds and dealings with another member of CSBL, EO has either given the benefit of doubt to the sub-broker or accepted its explanation. On a perusal of these charges and the submissions of the sub-broker, I have no reason to differ with the EO.

4.8 In the facts and circumstances of the case, I am of the view that a minor penalty of censure would be adequate and would have a deterrent effect on the sub-broker.

5.0 ORDER

5.1 Now, therefore, in exercise of powers conferred upon me in terms of Regulation 13(4) of SEBI (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulation 2002, I hereby censure M/s.Kattikaren and Co., Sub-Broker having Sebi Registration No. INS231013512 affiliated to M/s.Cochin Stock Brokers Ltd., Member, National Stock Exchange.

5.2 This order shall come into force with immediate effect.

Place: Mumbai

Date: December 04, 2006

T.C.NAIR

Whole Time Member

Securities and Exchange Board of India